



John S. Beulick
Armstrong Teasdale LLP
Suite 2600
One Metropolitan Square
St. Louis MO 63102

COPY MAILED

MAR 08 2004

OFFICE OF PETITIONS

In re Application of
Tang
Application No. 10/608,460
Filed: June 27, 2003
Attorney Docket No. 130398
For: SCATTER CORRECTION
METHODS AND APPARATUS

:
:
: DECISION GRANTING
: PETITION
:
:

This is a decision on the petition entitled, "PETITION TO CORRECT FILING DATE OF FILED APPLICATION," filed February 17, 2004, requesting that the above-identified application be accorded a filing date of June 27, 2003, instead of the presently accorded filing date of November 5, 2003. The petition will be treated under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**.

The application was filed on June 27, 2003. On September 24, 2003, the Office of Initial Patent Examination mailed a Notice of Omitted Item(s) in a Nonprovisional Application ("Notice") stating that the application had been accorded a filing date of June 27, 2003 and informing petitioner that page 10 of the specification appeared to have been omitted.

On November 5, 2003, petitioner filed a preliminary amendment.

An Updated Filing Receipt was mailed on December 5, 2003. The Update Filing Receipt stated that the filing date of the above-identified application was November 5, 2003.

In response to the Notice, petitioner filed the present petition.

The mailing of a "Notice of Omitted Items" permits an applicant to either: (1) promptly establish prior receipt in the PTO of the items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing items were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)). Failure to select option (1) or (2) above is considered a constructive acceptance of the application as filed.

In the instant case, petitioner did not select option (1) or (2). The November 5, 2003 submission is clearly a preliminary amendment.

What is most salient to the analysis at hand is what petitioner did **NOT** do. Petitioner did not file a petition under 37 CFR 1.182 and required fee. Petitioner did not file a supplemental oath/declaration referring to omitted page 10. In short, petitioner did not ask for a later filing date.

Instead, petitioner accepted the application as filed on June 27, 2003 and submitted a preliminary amendment adding material (presumably the material on omitted page 10), so that the examiner could determine whether the submission contained new matter (see MPEP 608.02(h)).

The application is entitled to a filing date of June 27, 2003. The Updated Filing Receipt was mailed in error. The petition is **GRANTED**.

No petition fee has been or will be charged in connection with this matter.

The application is being returned to Office of Initial Patent Examination for further processing with a filing date of **June 27, 2003** and the mailing of a corrected filing receipt. The examiner of record will consider the November 5, 2003 Amendment with respect to new matter issues.

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions